

By: Mettetal

To: Business and
Financial
Institutions

SENATE BILL NO. 3012

1 AN ACT TO REENACT SECTIONS 73-59-1 THROUGH 73-59-19,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE LICENSING AND
3 REGULATION OF RESIDENTIAL BUILDERS AND REMODELERS; TO REENACT
4 SECTIONS 31-3-3 AND 31-3-5, MISSISSIPPI CODE OF 1972, WHICH
5 PROVIDE FOR THE STATE BOARD OF CONTRACTORS AND FOR THE
6 ORGANIZATION AND ADMINISTRATION OF THE BOARD; TO AMEND SECTION 14,
7 CHAPTER 431, LAWS OF 1995, TO EXTEND THE REPEALER REGARDING THE
8 LICENSING AND REGULATION OF RESIDENTIAL BUILDERS AND REMODELERS
9 AND THE STATE BOARD OF CONTRACTORS; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 SECTION 1. Section 73-59-1, Mississippi Code of 1972, is
12 reenacted as follows:

13 73-59-1. For the purposes of this chapter, the following
14 words shall have the meanings ascribed herein:

15 (a) "Board" means the State Board of Contractors
16 created in Section 31-3-3, Mississippi Code of 1972.

17 (b) "Residential builder" means any corporation,
18 partnership or individual who constructs a building or structure
19 for sale for use by another as a residence or who, for a fixed
20 price, commission, fee, wage or other compensation, undertakes or
21 offers to undertake the construction, or superintending of the
22 construction, of any building or structure which is not more than
23 three (3) floors in height, to be used by another as a residence,
24 when the cost of the undertaking exceeds Fifty Thousand Dollars
25 (\$50,000.00).

26 (c) "Remodeler" means any corporation, partnership or
27 individual who, for a fixed price, commission, fee, wage or other
28 compensation, undertakes or offers to undertake the construction,
29 or superintending of the construction, of improvements to an

existing residence when the cost of the improvements exceeds Ten Thousand Dollars (\$10,000.00).

(d) "Residential construction" means any undertaking described in paragraph (b) of this section performed by a residential builder.

(e) "Residential improvement" means any undertaking described in paragraph (c) of this section performed by a remodeler.

SECTION 2. Section 73-59-3, Mississippi Code of 1972, is reenacted as follows:

73-59-3. (1) Except as otherwise provided in Section 73-59-15, persons who perform residential construction or residential improvement shall be licensed by the board annually, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the board:

(a) Proof of workers' compensation insurance, if applicable;

(b) A federal employment identification number or social security number.

(2) The board shall not require liability insurance to be licensed under this chapter but if a licensee has liability insurance it shall be reflected on the certificate of licensure.

(3) Any person engaged in residential construction or residential improvement on or before July 1, 1995, shall be duly licensed by the board, without examination, after paying the required license fee by submitting to the board not later than January 31, 1999:

(a) The information described in subsections (1) and (2) of this section; and

(b) (i) A sworn affidavit showing that such person has constructed or improved a minimum of five (5) residential homes or ten (10) apartment units, along with a description and location of such homes or apartment units and the names and addresses of the persons or owners for whom such homes or apartment units were constructed; or

(ii) Proof that such person holds a valid license or certificate of responsibility for general construction issued

67 by the board.

68 (4) The board shall issue or renew a license to a
69 residential builder or remodeler upon payment to the board of the
70 license fee. The initial license fee shall be Fifty Dollars
71 (\$50.00). The license fee may thereafter be increased or
72 decreased by the board and cannot exceed One Hundred Dollars
73 (\$100.00); however, the receipts from fees collected by the board
74 shall be no greater than the amount required to pay all costs and
75 expenses incurred by the board in enforcing the provisions of this
76 chapter. All fees collected under this chapter shall be deposited
77 into the special fund in the State Treasury known as the "State
78 Board of Contractor's Fund" created pursuant to Section 31-3-17
79 and shall be used only for the administration and enforcement of
80 this chapter. Amounts in such fund shall not lapse into the State
81 General Fund at the end of a fiscal year. Interest accrued to
82 such fund shall remain in the fund. All expenditures from the
83 special fund shall be by requisition to the Department of Finance
84 and Administration, signed by the executive secretary of the board
85 and countersigned by the chairman or vice chairman of the board.

86 (5) The license shall expire on the last day of the twelfth
87 month following its issuance or renewal and shall become invalid
88 unless renewed. The board shall notify by mail every licensee
89 under this chapter of the date of the expiration of his license
90 and the amount of the fee required for renewal of the license for
91 one (1) year. Such notice shall be mailed within thirty (30) days
92 prior to the expiration date of the license. The failure on the
93 part of any licensee to renew his license annually in such twelfth
94 month shall not deprive such licensee of the right of renewal,
95 provided that renewal is effected within one hundred twenty (120)
96 days after the expiration date of the license by payment of the
97 license fee plus a penalty of one hundred percent (100%) of the
98 license fee. A new license required to replace a revoked, lost,
99 mutilated or destroyed license may be issued, subject to the rules

of the board, for a charge of not more than Twenty-five Dollars (\$25.00).

(6) Any person who is not a resident of the State of Mississippi who desires to perform residential construction or residential improvement shall be licensed to perform such construction or improvement as provided by this chapter.

SECTION 3. Section 73-59-5, Mississippi Code of 1972, is reenacted as follows:

73-59-5. Any corporation, partnership or individual seeking to be licensed and examined under this chapter shall file with the board at least thirty (30) days prior to the next meeting of the board a written application on such form as may be prescribed by the board. Such application shall be accompanied by the payment of the license fee. If the application is not approved by the board, the applicant shall be refunded the license fee. If the application sufficiently contains the information required pursuant to this chapter, the applicant shall be examined by the board at its next meeting using a uniform written examination prescribed by the board. The board shall administer an oral examination to applicants who are unable to take the written examination. In addition, the board, in examining such applicant, shall consider the following:

(a) Experience;

(b) Complaints; and

(c) Other pertinent information the board may require.

If, as a result of the examination, the board finds that the applicant is qualified to engage in residential construction or residential improvement in Mississippi, the applicant shall be issued a license. If the board denies the issuance of a license to any applicant, the license fee shall be returned by the board to the applicant. Any applicant rejected by the board shall be given the opportunity to be reexamined at the next regularly scheduled examination date after a new application has been filed

133 and the license fee has again been paid.

134 The board shall make and preserve a record of each
135 examination of an applicant and the findings of the board
136 pertaining to such examination. A certified copy of such record,
137 omitting confidential test questions, shall be furnished to the
138 applicant so requesting such record upon the payment of a fee to
139 the board that reasonably reflects the cost of furnishing such
140 record to the applicant.

141 Each application or filing made under this section shall
142 include the social security number(s) of the applicant in
143 accordance with Section 93-11-64, Mississippi Code of 1972.

144 SECTION 4. Section 73-59-7, Mississippi Code of 1972, is
145 reenacted as follows:

146 73-59-7. In the event of a catastrophe or emergency which
147 arises out of a disaster, act of God, riot, civil commotion,
148 conflagration or other similar occurrence, the board, upon
149 application, may issue an emergency license to persons who are
150 residents or nonresidents of this state and who may or may not be
151 otherwise licensed residential builders or remodelers. Such
152 emergency license shall remain in force for a period not to exceed
153 ninety (90) days, unless extended for an additional period of
154 ninety (90) days by the board or until a contract to build or
155 remodel entered into during the period of the emergency license
156 has been completed.

157 Within five (5) days of any applicant beginning work as a
158 residential builder or remodeler under this section, the employer
159 or person contracting with such person shall certify to the board
160 such application without being deemed in violation of this
161 chapter, provided that the board, after notice and hearing, may
162 take disciplinary action or revoke the emergency license upon
163 grounds as otherwise contained in this chapter providing for such
164 disciplinary action or revocation of a residential builder's or
165 remodeler's license.

166 The fee for an emergency license shall be in an amount not to
167 exceed Fifty Dollars (\$50.00) as determined by the board and shall
168 be due and payable at the time of the issuance of such emergency
169 license.

170 SECTION 5. Section 73-59-9, Mississippi Code of 1972, is
171 reenacted as follows:

172 73-59-9. (1) Any residential builder who undertakes or
173 attempts to undertake the business of residential construction
174 without having a valid license as required by this chapter, or who
175 knowingly presents to the board, or files with the board, false
176 information for the purpose of obtaining such license, shall be
177 deemed guilty of a misdemeanor and upon conviction shall be fined
178 not less than One Hundred Dollars (\$100.00) and not more than Five
179 Thousand Dollars (\$5,000.00) or be imprisoned for not less than
180 thirty (30) nor more than sixty (60) days in the county jail, or
181 both.

182 (2) Any remodeler who undertakes or attempts to undertake
183 the business of residential improvement without having a valid
184 license as required by this chapter, or who knowingly presents to
185 the board, or files with the board, false information for the
186 purpose of obtaining such license, shall be deemed guilty of a
187 misdemeanor and upon conviction shall be fined not less than One
188 Hundred Dollars (\$100.00) and not more than Five Thousand Dollars
189 (\$5,000.00) or be imprisoned for not less than thirty (30) nor
190 more than sixty (60) days in the county jail, or both.

191 (3) A residential builder or remodeler who does not have the
192 license provided by this chapter may not bring any action, either
193 at law or in equity, to enforce any contract for residential
194 building or remodeling or to enforce a sales contract.

195 SECTION 6. Section 73-59-11, Mississippi Code of 1972, is
196 reenacted as follows:

197 73-59-11. (1) The board shall have the following additional
198 duties for the purposes of this chapter:

199 (a) To conduct thorough investigations of all
200 applicants seeking a license or licensees seeking renewal of their
201 licenses and of all complaints filed with the board concerning the
202 performance of a residential builder.

203 (b) To obtain information concerning the responsibility
204 of any applicant for a license or of a licensee. Such information
205 may be obtained by investigation, by hearings, or by any other
206 reasonable and lawful means. The board shall keep such
207 information appropriately filed.

208 (c) To maintain a list of residential builders and
209 remodelers to whom licenses are issued, refused, revoked or
210 suspended, which list shall be available to any interested person.

211 (d) To prepare annually a complete roster that shows
212 all the names and places of business of the residential builders
213 and remodelers licensed by the board during the preceding year and
214 to forward a copy of the roster to each municipality and county in
215 the state and to file the roster with the Secretary of State.

216 (e) To take disciplinary actions pursuant to the
217 provisions of Section 73-59-13.

218 (f) To adopt rules and regulations governing
219 disciplinary actions and the conduct of its hearings and to adopt
220 such other rules and regulations as the board finds necessary for
221 the proper administration of this chapter.

222 (2) The board shall notify all licensees and persons
223 identified as needing licensing under this chapter of the
224 provisions of House Bill No. 1894, 1998 Regular Session, [Laws,
225 1998, ch. 535] immediately upon its passage. The board shall
226 publish notice of the period of time prescribed in Section
227 73-59-3(3) at least three (3) times in a newspaper with statewide
228 circulation. The board shall provide notice by certified letter
229 to all persons needing licensing sixty (60) days before the period
230 of time described in Section 73-59-3(3) expires and again thirty
231 (30) days before such expiration. The notice shall provide all

the information required for any person to be licensed under this chapter.

SECTION 7. Section 73-59-13, Mississippi Code of 1972, is reenacted as follows:

73-59-13. (1) The board, upon satisfactory proof and in accordance with the provisions of this chapter and the regulations of the board pertaining thereto, is authorized to take the disciplinary actions provided for in this section against any person for any of the following reasons:

(a) Violating any of the provisions of this chapter or the rules or regulations of the board pertaining to the work of residential building or residential improvement;

(b) Fraud, deceit or misrepresentation in obtaining a license;

(c) Gross negligence or misconduct;

(d) Engaging in work of residential building or residential improvement on an expired license or while under suspension or revocation of license unless the suspension or revocation be abated in accordance with this chapter;

(e) Loaning a license to an unlicensed person;

(f) Failing to maintain workers' compensation insurance, if applicable; or

(g) Failing to pay for goods or services for which the builder is contractually bound.

(2) Any person, including members of the board, may prefer charges against any other person for committing any of the acts set forth in subsection (1) of this section. Such charges shall be sworn to, either upon actual knowledge or upon information and belief, and shall be filed with the board.

The board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed

by the board, regarding the charges and may compel the accused by subpoena to appear before the board to respond to such charges.

No disciplinary action may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereon, which shall be personally served on such accused or mailed by certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days prior to the date fixed for the hearing.

(3) At any hearing held hereunder, the board shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers, documents or other materials which may be pertinent to the proceedings. The board may designate or secure a hearing officer to conduct the hearing. All evidence shall be presented under oath, which may be administered by any member of the board, and thereafter the proceedings may, if necessary, be transcribed in full by a court reporter and filed as part of the record in the case. Copies of such transcriptions may be provided to any party to the proceedings at a price reflecting actual cost, to be fixed by the board.

All witnesses who are subpoenaed and appear in any proceedings before the board shall receive the same fees and mileage as allowed by law to witnesses in county, circuit and chancery court pursuant to Section 25-7-47, Mississippi Code of 1972, and all such fees shall be taxed as part of the costs in the case.

When, in any proceeding before the board, any witness shall fail or refuse to attend upon subpoena issued by the board, shall refuse to testify, or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court

of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused shall have the right to be present at the hearing in person, by counsel or other representative, or both. The board is authorized for proper cause to continue or recess the hearing as may be necessary.

(4) At the conclusion of the hearing, the board may either decide the issue at that time or take the case under advisement for further deliberation. The board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward to the last known business or residence address of the accused, by certified mail, return receipt requested, a written statement of the decision of the board.

(5) If a majority of the board finds the accused guilty of the charges filed, the board may:

- (a) Issue a public or private reprimand;
- (b) Suspend or revoke the license of the accused; or
- (c) In lieu of or in addition to any reprimand, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) for each violation.

(6) A monetary penalty assessed and levied under this section shall be paid to the board upon the expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the guilty party elects. Money collected by the board under this section shall be deposited to the credit of the State Board of Contractors' Fund.

When payment of a monetary penalty assessed and levied by the board in accordance with this section is not paid when due, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of

the county of residence of the delinquent party; however, if the delinquent party is a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(7) When the board has taken a disciplinary action under this section, the board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that such party shall not further violate either the laws of the State of Mississippi pertaining to the practice of residential construction or residential remodeling or the bylaws, rules or regulations promulgated by the board.

(8) The board shall not assess any of the costs of disciplinary proceedings conducted pursuant to this section against the prevailing party.

(9) The power and authority of the board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceedings, civil or criminal, concerning the same violation or violations except as provided in this section.

(10) The board, for sufficient cause, may reissue a revoked license whenever a majority of the board members vote to do so.

(11) Any person aggrieved by any order or decision of the board may appeal within ten (10) days from the date of adjournment of the session at which the board rendered such order or decision, and may embody the facts, order and decision in a bill of exceptions which shall be signed by the person acting as chairman of the board. The board shall transmit the bill of exceptions to either the chancery court of the county of residence of the appellant, or the Chancery Court of the First Judicial District of Hinds County, at the election of the appellant, and the court or chancellor shall hear and determine the same either in termtime or in vacation, on the case as presented by the bill of exceptions, as an appellant court, and shall affirm or reverse the judgment.

364 If the judgment be reversed, the chancery court or chancellor
365 shall render such order or judgment as the board ought to have
366 rendered, and certify the same to the board; and costs shall be
367 awarded as in other cases. The board may employ counsel to defend
368 such appeals, to be paid out of the funds in the State Board of
369 Contractors' Fund.

370 The remedies provided under this chapter for any aggrieved
371 applicant shall not be exclusive, but shall be cumulative of and
372 supplemental to any other remedies which he may otherwise have in
373 law or in equity, whether by injunction or otherwise.

374 (12) Any political subdivision or agency of this state which
375 receives a complaint against a residential builder or remodeler
376 shall, in addition to exercising whatever authority such political
377 subdivision or agency has been given over such complaint, forward
378 the complaint to the board.

379 (13) In addition to the reasons specified in subsection (1)
380 of this section, the board shall be authorized to suspend the
381 license of any licensee for being out of compliance with an order
382 for support, as defined in Section 93-11-153. The procedure for
383 suspension of a license for being out of compliance with an order
384 for support, and the procedure for the reissuance or reinstatement
385 of a license suspended for that purpose, and the payment of any
386 fees for the reissuance or reinstatement of a license suspended
387 for that purpose, shall be governed by Section 93-11-157 or
388 93-11-163, as the case may be. Actions taken by the board in
389 suspending a license when required by Section 93-11-157 or
390 93-11-163 are not actions from which an appeal may be taken under
391 this section. Any appeal of a license suspension that is required
392 by Section 93-11-157 or 93-11-163 shall be taken in accordance
393 with the appeal procedure specified in Section 93-11-157 or
394 93-11-163, as the case may be, rather than the procedure specified
395 in this section. If there is any conflict between any provision
396 of Section 93-11-157 or 93-11-163 and any provision of this

chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 8. Section 73-59-15, Mississippi Code of 1972, is reenacted as follows:

73-59-15. (1) This chapter shall not apply to:

(a) Agricultural buildings, buildings used for agricultural purposes, buildings constructed as a community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence or on his other real estate holdings, or who acts as his own general contractor in the performance of construction or improvement on his own residence or on his other real estate holdings, or who acts under the supervision of the owner-occupant who is the general contractor;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner-occupant with respect to residential construction or improvement, when the owner of such construction or improvement is related to such person by consanguinity or direct affinity;

(d) The owners of property who supervise, superintend, oversee, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or maintenance of any building, railroad, excavation, project, development, improvement, plant facility or any other construction undertaking on such property for use by such owner and which will not be for sale, rent, public use or public assembly;

(e) An employee of a licensed residential builder;

(f) A contractor holding a valid license or certificate of responsibility for general construction from the board;

(g) Any nonresident contractor holding a valid license

or certificate of responsibility for general construction;

(h) Any person who constructs two (2) single residences or less within a period of one (1) year in any county or municipality which does not require a building permit or any local certification for such construction.

(2) A person specified in subsection (1)(b) shall not make more than two (2) applications for a permit to construct a single residence or shall not construct more than two (2) single residences within a period of one (1) year. There shall be a rebuttable presumption that such person intends to construct for the purpose of resale, lease, rent or any similar purpose if more than two (2) applications are made for a permit to construct a single residence or if more than two (2) single residences are constructed within a period of one (1) year.

(3) The provisions of this section shall not apply to builders and remodelers who are not domiciled in the State of Mississippi. Builders and remodelers who are not domiciled in the State of Mississippi are not required to be licensed under the provisions of this chapter if the state in which they are domiciled requires licensing and the licensing state's requirements are at least the equivalent of those requirements provided in this chapter.

SECTION 9. Section 73-59-17, Mississippi Code of 1972, is reenacted as follows:

73-59-17. The building official, or other authority charged with the duty of issuing building or similar permits, of any municipality or county, shall refuse to issue a permit for any undertaking which would classify the applicant as a residential builder or remodeler under this chapter unless the applicant has furnished evidence that he is either licensed as required by this chapter or exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, shall also report to the

board the name and address of any person who, in his opinion, has violated this chapter by accepting, or contracting to accomplish, work which would classify the person as a residential builder or remodeler under this chapter without a license or acknowledgement.

SECTION 10. Section 73-59-19, Mississippi Code of 1972, is reenacted as follows:

73-59-19. Any residential builder or remodeler licensed pursuant to the provisions of this chapter may, without being required to obtain an additional license under any other law of this state, construct, improve, repair, remodel or renovate any commercial structure, provided the prescribed contract job does not exceed seven thousand five hundred (7,500) square feet.

SECTION 11. Section 31-3-3, Mississippi Code of 1972, is reenacted as follows:

31-3-3. There is hereby created the State Board of Contractors of the State of Mississippi, which shall consist of ten (10) members who shall be appointed by the Governor. All appointments to the board after July 1, 1980, shall be made with the advice and consent of the Senate. Two (2) road contractors; two (2) building contractors; two (2) residential builders as defined in Section 73-59-1; one (1) plumbing or heating and air conditioning contractor; one (1) electrical contractor; and one (1) water and sewer contractor shall compose the board. From and after July 1, 1992, the Governor shall appoint one (1) additional member who shall be a roofing contractor and whose term of office shall be five (5) years. Each member shall be an actual resident of the State of Mississippi and must have been actually engaged in the contracting business for a period of not less than ten (10) years before appointment. The initial terms of the two (2) residential builders shall be for two (2) and four (4) years, respectively, beginning July 1, 1993.

Upon the expiration of the term of office of any member of the board, the Governor shall appoint a new member for a term of

496 five (5) years, such new appointments being made so as to maintain
497 on the board two (2) building contractors; two (2) road
498 contractors; two (2) residential builders; one (1) plumbing or
499 heating and air conditioning contractor; one (1) electrical
500 contractor; and one (1) water and sewer contractor; and one (1)
501 roofing contractor. The Governor shall fill any vacancy by
502 appointment, such appointee to serve the balance of the term of
503 the original appointee. The Governor may remove any member of the
504 board for misconduct, incompetency or willful neglect of duty.

505 In the event the Governor fails to appoint a member of the
506 board within twelve (12) months of the occurrence of the vacancy,
507 such vacancy shall be filled by majority vote of the board,
508 subject to advice and consent of the Senate and the requirements
509 of this section.

510 SECTION 12. Section 31-3-5, Mississippi Code of 1972, is
511 reenacted as follows:

512 31-3-5. The board shall be assigned suitable office space at
513 the seat of government and shall elect one (1) of its members as
514 chairman and one (1) as vice chairman; and each shall perform the
515 usual duties of such offices. The board may adopt a seal. Six
516 (6) members of the board shall constitute a quorum, and a majority
517 vote of those present and voting at any meeting shall be necessary
518 for the transaction of any business coming before the board.
519 Members must be present to cast votes on any and all business.
520 The executive secretary shall serve as secretary of the board.
521 The board is authorized to employ such personnel as shall be
522 necessary in the performance of its duties including sufficient
523 administrative and clerical staff to process and review
524 applications for certificates of responsibility, to prepare and
525 administer tests therefor, to investigate applications for
526 certificates of responsibility and to inspect work performed by
527 contractors as may be necessary to enforce and carry out the
528 purpose of this chapter.

529 SECTION 13. Section 14, Chapter 431, Laws of 1995, is

530 amended as follows:

531 Section 14. This act shall take effect and be in force from

532 and after its passage, and shall stand repealed on July 1, 2002.

533 SECTION 14. This act shall take effect and be in force from

534 and after July 1, 2000.